Recap

- Definition of research Systematic continuous inquiry into seeking facts, based on logical reasoning, generates new questions, disproves lies, tests theories, contributes to existing knowledge
- Methodology technique/ strategy on how to conduct research the initial approach to research. An
 explanation and justification for using certain research methods and of the methods themselves
- Advantages of Methodology research is more efficient, gives an element of objectivity to the research
- Research methods techniques/ tools used in conducting the search and collecting data. 10 methods:-
- 1. Basic/ Fundamental vs Applied (answers specific questions)
- 2. Descriptive (reports what has happened/ what is happening. No opinion. Answers Qs: . How much/ how many/ how regularly/ what percentage/ what time?) vs Analytical (critical evaluation of facts, draws conclusions. Method used for legal writing)
- 3. Qualitative (subjective, non-numerical data, generates new ideas for research) vs Quantitative (objective, focus on numbers)
- 4. Correlational (see relationships between variables) vs Experimental (cause and effect)
- 5. Empirical (based on experience, observation and testing) vs Conceptual (analyze current information and come up with a theory/ idea/concept)



Recap

- What is legal research systematic finding or ascertainment of law on an identified topic or in a given area as well as an inquiry into law with a view of making advancement in the science of law.
- The finding of particular laws in a cast mass of statutes which are constantly amended, introduced and replead to the facts of your case. It also involves the finding of legal principles which do not emanate from law but emanate from out sources e.g. judgments
- Legal enquiries will be: Why a particular rule? What led to its adoption? What are its effects? Whether it is suited to the present conditions? How can it be improved? Whether it needs to be replaced entirely by a new rule?
- Purposes of legal research introductions and reforms e.g.decriminalization of slanderous words in social media and cannabis



Recap

- Purpose of Legal Research:-
- 1. Ascertain the Law locating, know what the law says ignorance of the law not an excuse
- 2. Highlight gaps and ambiguities
- Determine coherence, stability and consistency damages concept – Butler vs Heard
- Social auditing identify gaps between legal ideal and society e.g. Cap. 69 The Reletting of Urban Property (Regulation) Ordinance – pre-1995 rent laws



Legal Research and Interpretation Methodology

Lecture Title: Legal Research - Sources

Lecturer: Dr Elian Scicluna Date: 15/01/2025



Diploma in Law (Malta)

Historical background of Legal Research

• The History of Law, Order & Justice! : Hidden Histories Video https://www.youtube.com/watch?v=OxOZ7KUC1yk



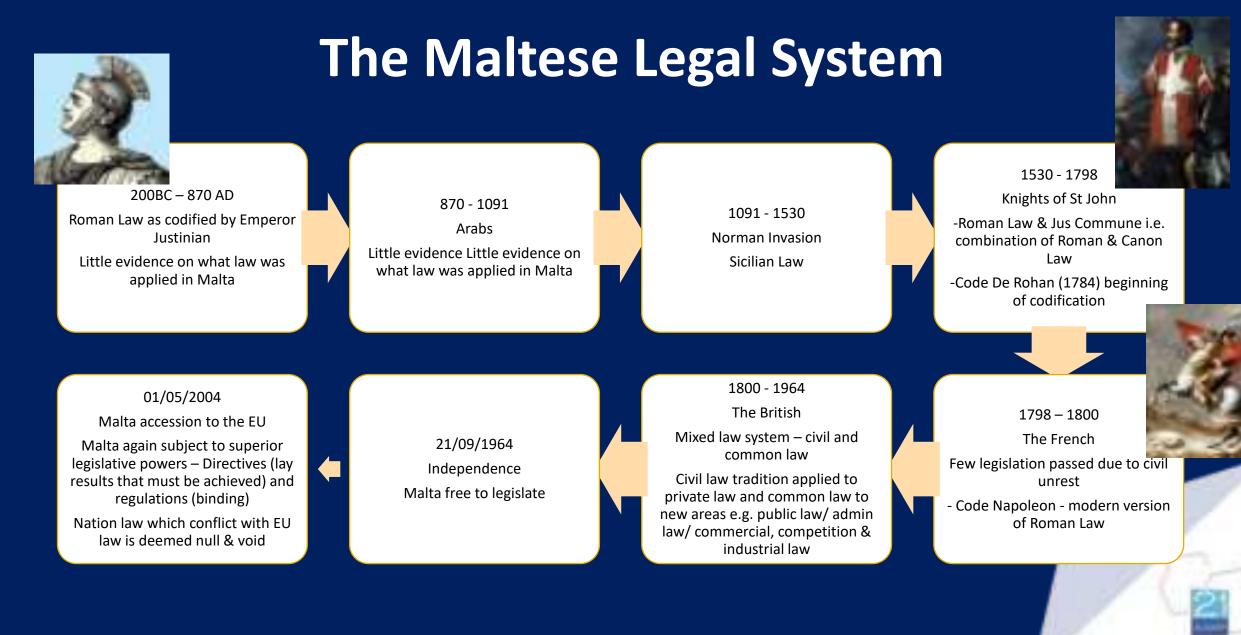
Historical background of Legal Research

- First attempt to codify common law can be traced back to Blackstone's era in 1765 with the publication of Commentaries on the Laws of England
- Modern research as we know it goes back to the introduction of the printing press technology in 1850s. Legal material started to be published leading to the creation of volume management problems
- Maltese publications are accessible from the National Library in Valletta
- Accessibility and increase in the volume of legal material hit with online databases. Information is easily accessible and more accurate and reliable











Skills in conducting legal research

Why do we need skills? Which are they?



Legal Research Skills

- Establish the legal issue narrow the field? E.g Rent laws -> pre-1995
- Reduce, break, separate the law into different elements

E.g. Arbitrary exercise of pretended rights – Art. 85 of Cap. 9

85.(1) Whosoever, without intent to steal or to cause any wrongful damage, but only in the exercise of a pretended right, shall, of his own authority, compel another person to pay a debt, or to fulfil any obligation whatsoever, or shall disturb the possession of anything enjoyed by another person, or demolish buildings, or divert or take possession of any water-course, or in any other manner unlawfully interfere with the property of another person, shall, on conviction, be liable to imprisonment for a term from one to three months

85.(1) Kull min, bla hsieb li jisraq jew li jaghmel hsara kontral-ligi, izda biss biex jezercita jedd li jippretendi li ghandu, igieghel, bl-awtorità tieghu nnifsu, lil xi hadd ihallas dejn, jew jesegwixxi obbligazzjoni, tkun li tkun, jew ifixkel lil xi hadd fil-pussess ta hwejgu, jew ihott bini, jew jikser il-mixi tal-ilma jew jiehu l-ilma ghalih, jew b'xi mod iehor, kontra l-ligi, jindahal fi hwejjeg haddiehor, jehel, meta jinsab hati, il-piena ta' prigunerija minnxahar sa tliet xhur:

The elements of this offence are when a person is deprived from the use of something and when the accused acted because he has a right to act in this way.

The accused must be aware that he should have taken a legal route.

There must be an act which deprives the possession of the object of the crime.



Legal Research Skills

- Use correct terminology/ different terminology e.g. rent/ lease kera/ kirja/ lokazzjoni - contract/private writing/public deed – promise of sale agreement/konvenju/conveyancing agreement
- Gather information about the legal issue primary, secondary, tertiary sources
- Use latest law go through amendments
- Filter through case law check for conflicting judgments
- Locate authorities
- Check multiple sources
- Discuss with senior colleagues if needed
- Cite
- Don't lose hope!



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Diploma in Law (Malta) Are the qualities of a legal researcher exhaustive?

Video: Abhayraj Naik Lecturer at Azim Premji University in India https://www.youtube.co m/watch?v=ISxRKddaXSM



Why does one need to possess the skills to conduct proper legal research? Example

• Jill and Jane are twin law students who are undertaking their first research assignment. For their first assignment they are given the following question:-

Select one case of your choice from the High Court, write a case note on the decision. In your case note explain the facts, identify the legal issues, explain the outcome and explain if and how the case changed the law



Jill's Approach

- Jill reads through the question several times so she is very clear on what she has to do.
- She attends the lecture where her lecturer explains how it is important for this topic to search beyond the case. Students will need to use journal articles that can help them understand the case and see if and how it has changed the law.
- Jill understands that researching for the assignment is only one aspect of the overall task. She plans to include enough time to research, write and proofread before submitting the assignment before the due date.



Jill's Approach – Web Search

- Jill starts her research with a quick Google search and chooses the keywords 'famous high court case Australia'.
- Jill clicks the second link "Top 10 Most Influential Court Cases of the Last 40 Years". She notes that the page was created by The College of Law, which may be ok as an initial source, was published in 2014 so it won't have any more recent cases unless it is updated.
- Jill decides to choose an older case since there might be more published information on the case. Reading through the list of cases Jill is interested in the cases of Dietrich v The Queen from 1992. She quickly looks through the summary of the legal issues and she thinks the right to a fair trial will be interesting to research.
- Jill then types 'Dietrich v The queen' in Google reads a Wikipedia entry which gives her the citation and a quick overview of what the case was about.



Jill's Approach (Searching for Case Law in FirstPoint)

- Jill then wants to check out a more detailed legal summary of the case to understand the legal issues. Jill remembers the Library workshop that she did early in the semester, Jill knows she can get some easy-to-read case summaries through FirstPoint (online caselaw research tool that provides citations, summaries and links to similar cases).
- From FirstPoint, Jill can read the summary of the case, she can also download the full-text case as a PDF. The PDF document is an official version
- Jill wants to know if this case is still good law. She goes to the bottom of the FirstPoint entry and sees that some cases that have been handed down since her case have been distinguished, some cases have also been applied and considered very recently. Jill makes her own conclusion about the case based on the evidence FirstPoint has given her.



Jill's Approach – Journals and Library Search

- Jill notes that she will have to go beyond just finding the case and will need to find out more about the right to a fair trial. Jill selects 4 journal articles: <u>A Constitutional Right to a Fair Trial? Implications for the Report of</u> <u>the Australian Criminal Justice System</u>, <u>Dietrich</u>, the High Court and Unfair Trials and <u>Difficulty in Obtaining a</u> <u>Fair Trial in Terrorism Cases</u>. All of them have quick summaries at the top so Jill can scan through them easily, they are written by experts and the citation details at the top of the articles make them easy to cite.
- Jill realises that she may need more resources for her assignment so she searches *Library Search* from the Library home page. She types in the keywords: 'right fair trial australia'.
- Jill finds several more articles on the topic of a fair trial. They are <u>The Dietrich Dilemma</u>, <u>Legal Aid and</u> <u>Access to Legal Representation: Redefining the Right to a Fair Trial</u> and <u>The Truth Can Cost Too Much: The</u> <u>Principles of a Fair Trial</u>. She chooses these articles as they are about the Dietrich case and they have been recently published in journals. These are useful articles for Jill as they help her analyse what the case was about, provide her with context, and explain the main legal issues.



Jill's Approach – Writing

- Now Jill has a good collection of resources, she can now start writing. Jill reads through the material and makes notes of the case, and on the secondary sources, she has found.
- She summarised the information in her own words and starts grouping the main ideas to form paragraphs in her essay. She plans out her essay and makes sure she has covered all the topics needed for a case note
- When Jill starts to write her assignment she refers to the authorised version of the Dietrich case from the Commonwealth Law Reports, mentions the primary sources of law including the Australian Constitution and the other relevant cases. She also relies on academic-quality journal articles to help her interpretation of the legal issues. Jill doesn't rely on the information from her initial Google or Wikipedia search, she now has better resources to choose from.



Jill's Approach – Final Result

- Jill gets her mark back a couple of weeks later. She got an A! The comments on her essay indicate that she got excellent marks due to her quality research, her selection of resources, and the academic quality of her work.
 - Take away:
 - Have a plan
 - Start with some easy search
 - READ THE LAW
 - Build up to academic quality material



Jane's Approach

• Jane reads through the assignment once and is really confused.

• She is not quite sure where to start but hears from another student that they are going to look at the He Kaw Teh case. Jane decides that she will do this too. She assumes that she has to talk about the main issue in the case.



Jane's Approach – Web Search

- Jane starts her search by typing the case name in Google and gets to the Wikipedia page He Kaw Teh v The Queen. She decides that this information summarises the case enough for her and decided to copy and paste the information into her essay and cite Wikipedia as the source. Jane still isn't quite sure about what is the main point of the case, but decides to get some information on drug trafficking in Australia as this seems to be the main issue.
- Jane does a Google Search by typing in 'what's the deal with drugs in Australia?'.
- She finds some web pages including information on What It's Like to Deal Drugs in Australia's Capital City, she finds a page on drug use and possession in New South Wales called Lawstuff, then she finds a page called Drug Abuse from a website called HealthDirect and a page about penalties for drug supply from Armstrong Legal. It takes a while for Jane to read through all the web pages and see keeps on searching to add more resources for her assignment.
- Jane decides that she needs more information on the case so goes back and conducts a Google search using the case name. She finds a case summary of UnitStudy Guides, she can see that this information originally comes from a textbook. Jane also finds some criminal law summary notes of a site called student VIP and some cram notes that briefly mention the case. She does find a version of the case but gives up as the case is way too long to read through (120 pages) when she has to do all the research



Jane's Approach – Writing

• Jane has spent a fair amount of time surfing the web and decides the quickest way for her to finish the assignment is to copy the best part of her resources into her assignment to form her essay.



Jane's Approach – Final Result

• Jane receives a fail grade! Where did it all go wrong?



- The comments on her paper reveal to Jane that she missed the main issue of the case. Even though the case did involve importing heroin into Australia, the main legal issue was that of intent or 'mens rea'. Research skills are really important, but it would have helped Jane if she was clear on what she had to research in the first place.
- Jane didn't look at the authorised case, did not search if the case is still being used in the law today.
- Jane also lost marks because her resources were of poor quality, using the web for the initial stage of
 research is useful, however, when selecting resources to include in an academic essay Jane would have been
 better off looking at academic sources to support her arguments.
- The most serious problem with Jane's essay was with what she was writing, she was mostly copying and pasting from the various sources she found without quotation marks and without analysis.
- Jane should have used her own words and her own work. Just copying and pasting from other sources, with or without citation, is poor academic practice. This has also raised an issue with plagiarism and now Jane may have breached academic integrity







Who conducts legal research?

- Anyone who is wanting to know something about the law, how it operates and who is willing to search for it
- Legislators
- Judiciary
- Lawyers, notaries, lecturers and students, court employees, other professionals incl. accountants, auditors, govt. employees, paralegals



Who carries out legal research? - Legislators







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Who carries out legal research? - Legislators

- Legislation in Malta is enacted by parliament
- Parliament is established by Chapter 6 the Constitution Cap. 0
- Chapter 6 provides for the establishment of parliament, house of representatives, disqualification of members, voting, speaker and deputy, power to make laws, alteration of the constitution, procedure of house of representatives, quorums

Article 72 of the Constitution – Mode of exercising legislative powers



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Mucle of exercising legislative protects Amondeal by: LPME 1974, 21 72. (1) The power of Pathament to make lown shall be exercised by bills passed by the House of Representatives and assented to by the President.

(2) When a bill is presented to the President for assent, he shall without delay signify that he assents.

(3) A bill shall not become law unless it has been duly passed

CONSTITUTION OF MALTA

and assented to in accordance with this Constitution.

(4) When a law has been assented to by the President it shall without delay be published in the Gazette and shall not come into operation until it has been so published, but Parliament may postpone the coming into operation of any such law and may make laws with retrospective effect.

74. Save as otherwise provided by Parliament, every law shall Language of Laws, be enacted in both the Maltese and English languages and, if there is any conflict between the Maltese and the English texts of any law, the Maltese text shall prevail.

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Who carries out legal research? - Legislators

- In the Maltese context legislation goes through a number of parliamentary procedures:-
- 1. First Reading Presentation of a motion. A motion consists of just the title of the bill to the House. After 3 days the bill is put on the parliament agenda. Motion is put to vote without any debate
- 2. Second Reading Upon publication, the bill is again included in the agenda of the House, for its Second Reading. The bill is discussed at this stage. Usually the Minister proposing the bill will give an introductory speech. After the winding up, the motion is put to the vote by the Speaker.
- 3. Committee Stage Each clause of the bill is examined separately and in detail. Both Government and Opposition Members may propose amendments during the discussion on a particular clause. At the end of discussion a vote is taken on all said amendments and the clause as amended. When the discussion ends the Chairperson informs the House about the progress made and whether the bill was passed with or without amendments.
- 4. Third Reading Members vote in favor or against the bill. The Speaker will then be in a position to declare whether the bill has been carried through its Third Reading stage by a majority of Members present and voting, save as otherwise provided in the Constitution. This voting procedure applies to all votes taken during the previously mentioned stages of the bill.
- 5. The bill is then presented to the President of Malta for his assent and published in the Government Gazette, becoming a Parliamentary Act.



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Second Reading – Transcript (in this case the bill was read 3 times at second reading stage

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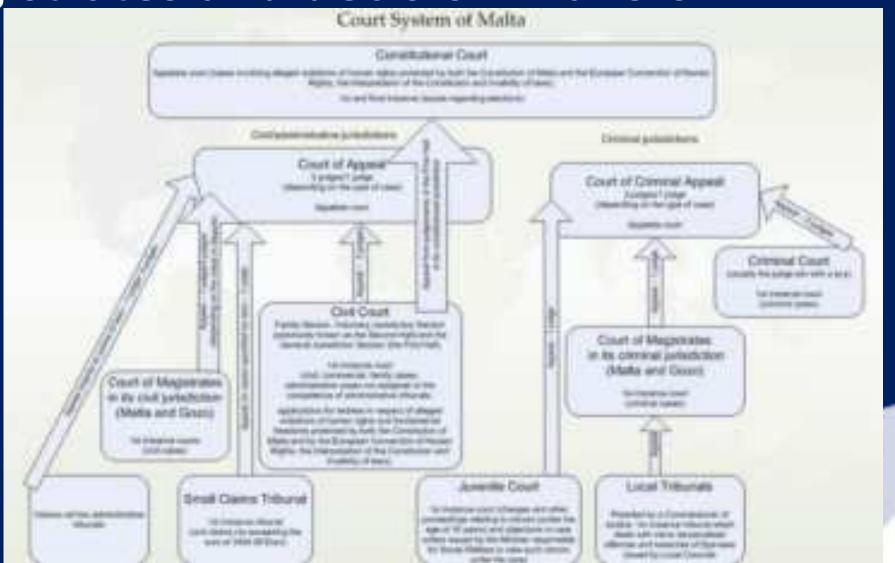
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Who carries out legal research? – Judges, Magistrates and decision makers

- Chief Justice + 28 Judges
- 29 Magistrates
- Both appointed by the president
- Judge/magistrates/ umpire (adjudicators), chairpersons on boards and tribunals
- Must be aware of principles and latest laws
- Has to provide reasons why he is applying a particular law
- Expected to make a true interpretation of the law
- In Malta judges and magistrates are aided by court attorneys and judicial assistants for research and collection of evidence
- Will have to look into the laws that the court he presides over has jurisdiction e.g Constitutional, rent, property rights matters
- Cannot exceed the competence given by law e.g. In money claims

Who carries out legal research? – Judges, Magistrates and decision makers



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Who carries out legal research? – Judges, Magistrates and decision makers

List of Tribunals in Malta – not exhaustive

- Police Licenses Appeals Tribunal
- Prison Appeals Tribunal
- Building and Construction Tribunal
- International Protection Appeals Tribunal
- Industrial Tribunal
- Arbiter & Patents Tribunal
- Administrative Review Tribunal
- Information and Data Protection Appeals Tribunal
- Partition of Inheritances Tribunal
- Small Claims Tribunal
- Environment and Planning Review Tribunal
- Commercial Sanctions Tribunal
- Financial Services Tribunal
- Consumer Claims Tribunal

Who carries out legal research? - Lawyers

- Wrong advice might derail client
- Consequences re liability and professional indemnity insurance
- Responsibility institute a case? Appeal or not? File a garnishee order? Expose client to retaliation with another garnishee? Penalty for frivolous garnishee? Court fees, Kawtela etc
- Similar to the judge must keep up with law introductions and amendments and case law
- Interpretation of the law must look into the nitty gritty of the law/case especially if the facts are against his clients
- If lawyer is limited to certain areas e.g. Tort law thorough legal research is not needed



Who carries out legal research? - Lawyers

- Note of submissions/ observations Legal briefs
- Requirements of the acts e.g. Warning in 166A letter or sworn application
- Research is required to provide a good advice
- Procedural and Substantive law
- What to do in grey areas?



Who carries out legal research? – Lecturers and students

- Lecturers need to do legal research as part of their professional commitment especially if they are teaching procedural or substantive law
- Needs to keep track of developments
- Students for performing assignments/ tasks assigned. It is the practice stage if one will pursue a career in the legal field – not necessarily as a lawyer, paralegal but even as a court official – same applies for professionals working in the legal field





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Diploma in Law (Malta)



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Which are the sources of legal research?



Which are the sources of legal research? Primar Sources **Secondary** Sources **Tertiary Sources**

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Which are the sources of legal research?

- Primary sources written/ codified law the core of all laws includes varied forms e.g. S.L. and bye laws and international legislation applicable
- Secondary sources Material that provides interpretation on primary sources
- Tertiary Source lists and summarises secondary and primary sources
- Some grey areas and a source might fall in more than one category



Primary Sources of Legal Research

- Constitution Cap. 0 core of all laws. Allows parliament to enact acts of parliament i.e. laws
- Acts of Parliament acts, subsidiary legislation, L.N, Bye laws
- Subsidiary Legislation Covers particular areas of the main act e.g. S.L 12.11 means test to increase rent
- Legal Notices Similar to bye laws, but not issued by local councils
- Bye Laws Laws issued by Local Councils for the purpose of carrying out their functions and for the prevention and suppression of nuisances in their locality
- Parliament Bills Laws which are not yet in force but are at preliminary stage
- Treaties An international agreement concluded between States in written form and governed by. international law. Oce ratified they become law. Unless ratified it is not a primary source but secondary
- Custom law (Customs law taxation of imported goods) set of rules which have existed since time in memorial and obtained the force of law. Mostly used in commercial and international law e.g the granting of immunity for visiting heads of state.
- Judgments Malta does not subscribe to the theory of precedent unlike common law. Judgments include ECHR and ECJ judgments
- EU Directives and Regulations

The Constitution of Malta

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Chapter of the laws of Malta and subsidiary legislation

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Chapter	Chapter Title	View
Cap. 16	Gwit Code	13
51.16RI	Ovil Code as at 31st December 2010	6
51, 36.01	Placing of Minors Regulations Repealed by Act XXIII of 2019	5
81, 1632	Displicate Acts of Civil Blatus Regulations	13
84, 1633	Designation of Officiens in reliation to Acts of Birth and Acts of Death Onlie Reprived by Act LOV of 2020	8
51, 10.04	Adoption Regulations.	8
51, 10.05	Oversees Adoption (Definition) Order	8
S.L. 16.06		
SL 16.07	Owl Code (Second Schethule) (Fees) Regulations	5
51.76.08	Civil Code (Second Schemale) (NAMPolitions and Forms) Regulations	5
51, 1679	Amalgamenton of Organisations Regulations Repeated by Act XXXVI of 2018 - See article 121	6
51, 1630	Givil Gode (Second Bitheduler) (Existing Organisations)Regulations	5
84(1631)	Continuation of Temancies (Means Testing Criteria) Regulations	

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Subsidiary legislation under Cap. 16 (Art. 1622A)

- In subsidiary legislation the rules are called regulations and not articles.
- The term 'articles' is used for Chapters/Acts



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Bye-laws

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Treaties

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Diploma in Law (Malta)

Where are we headed?

What about Artificial Intelligence?



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The future of Legal Research – Artificial Intelligence

- A.I has already been introduced in the sphere of legal research. Programs like Westlaw Edge, allow for the uploading of draft arguments. The system analyzes the text and provides further insight by identifying highly relevant authority that may have been missed
- Platforms inform you if a point of law in a case has been overruled
- Some programs are capable of generating insight into patterns in a judge's behavior by analyzing a judge's past rulings - How often does a judge side with a plaintiff? In your specific type of claim? What kind of arguments resonate with your judge? What kinds of authority does the judge prefer?
- This kind of insight is available also on opposing legal representatives. If your opposing counsel or their law firm has any history in the court system, you may be able to get datadriven analytics about them. How much experience does your opposing counsel have on a particular issue? How successful are they on certain types of claims? Do they have any history with your judge?
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